REJOINDER OF JUDGE DOUGLAS TO JUDGE BLACK.

The Washington "Constitution," the central organ of my assailants, contains the Attorney General's rejoinder. He has lost his temper without sufficient cause. If the lawyers throughout the country are all laughing at him for gravely asserting a series of legal propositions, every one of which has been decided against him by the Supreme Court of the United States, he should remember that it was his own officious conduct that brought him into this unenviable position. The controversy was of his own seeking. I have never commenced or provoked a political controversy with any Democrat; and my invariable rule is to leave all questions of law to the judicial tribunals.

If the Attorney General did not know what the law was he should not have attempted a display of learning which he did not possess. If, on the contrary, he did know that the Supreme Court of the United States, and nearly all the State courts, and all foreign tribunals have decided the law to be *precisely the reverse* of what he stated it to be, he should congratulate himself and feel grateful for his escape with so lenient a punishment. Here is a specimen of the recklessness with which a man sometimes speaks when he allows his wounded pride and the violence of his passions to stifle the promptings of his conscience. Speaking of my reply, Judge Black says:

"There is scarcely a sentence in this whole pamphlet which does not either pronounce an error or else mangle a truth."

This is a medium sample of the style and character of the Attorney General's rejoinder. Three newspaper columns of disreputable imputations and equivocal disclaimers, nearly every alternate sentence pregnant with offensive innuendoes, and succeeded with apologetic assurances that he did not wish to be understood as saying that the truth had been *intentionally* mangled or the law knowingly misstated. Judge Black seems to be under the impression that it is as much a matter of course for an honest man to mangle the truth as for himself to blunder in the law every time he opens his mouth, and that ignorance of both fact and law is sufficient excuse for propounding error and mangling truth. He should remember that neither pompous pretension to great learning in the law beyond what is written in the books, nor the possession of a high office, no matter how worthily or unworthily filled, can justify any gentleman in thrusting himself officiously into a controversy with which he has no connexion, officially or personally, and, without provocation, dealing in wholesale charges and offensive innuendoes, without any specification of the alleged facts, or proof to sustain his unfounded imputations. Had he known me well enough to appreciate the impulses of my heart he would have known that, if he could have pointed out and established any one error of fact or law in my reply, I would have felt more pride and pleasure in making a prompt correction than in persevering in the wrong when convinced of my error.

When I deemed it my duty, in self-defence, at Wooster, to denounce his misrepresentations of my position, I accompanied the denunciation with distinct specifications and proof to sustain them so satisfactory and conclusive that, although he has since replied twice, in his appendix and rejoinder, he has not ventured to deny any one fact, or question any one specification, nor attempted to relieve himself from the public conviction of having assailed without provocation, and traduced without justification, a man who had done him no other injury than to find nothing in his previous career particu-

larly worthy of censure or applause. Without further notice of these petty personal matters, which injure those only who indulge in them, let us see how the main points in controversy now stand.

In my reply to Judge Black I produced and quoted the decisions of the Supreme Court of the United States, in which the following propositions were solemnly and authoritatively established as the law of the land:

1st. That the state of slavery is a mere municipal regulation, founded upon and limited to the range of territorial laws.

2d. That the laws of one State or country can have no force or effect in another *without its consent*, express or implied.

3d. That in the absence of any positive rule upon the subject, affirming or denying or restraining the operation of the foreign laws or laws of one State or country in their application to another, the courts will presume the tacit adoption of them by the government of the place where they are sought to be enforced, unless they are repugnant to its policy or prejudicial to its interests.

The Attorney General neither admits nor denies the correctness of these propositions, nor does he either admit or deny that the courts have so decided. To admit their correctness would necessarily involve an abandonment of his position and a confession that he had been wrong from the beginning. To deny them would bring him in direct conflict with the authority of the court and expose him to an inevitable conviction by the record. Forced into this dilemma and impaled between these alternatives, either of which is fatal to his reputation as a lawyer, the Attorney General passes in silence by the decisions of the court which I brought to his notice, and reasserts his original position with the unanimous opinion of the Supreme Court of the United States, as delivered by Chief Justice Taney, in the case of the Bank of Augusta *vs.* Earle, which I have quoted in my reply, with a reference to volume and page, 13th Peters, 519.

Judge Black asserts that "a right of property, a private relation, condition, or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to another country, unless the law of that country be in direct conflict with it;" and that such right "depends on the law of the place where he came from, and *depends on that alone*."

The doctrine of the court is that the law of one State or country can have no force or effect in another without its consent or tacit adoption, and that its validity depends upon such "consent or tacit adoption," and *upon that alone*, and *not* upon the authority of the State or country from which the party removed. Here is a radical, irreconcilable difference of opinion between Judge Black and the Supreme Court of the United States.

I brought this difference of opinion to the notice of Judge Black in my reply, and, in view of it, commended to his consideration, in respectful terms, the following words of wisdom from his own pen:

"In former times a question of constitutional law once decided by the Supreme Court was regarded as settled by all *except that little band of ribald infidels who meet periodically at Boston to blaspheme the religion and plot rebellion against the laws of the country!*"

Judge Black has not attempted to reconcile his opinion with the decision of the court. No man in his senses can fail to perceive that if the court is right Judge Black is inevitably wrong. Although the whole legal controversy between Judge Black and myself turns on this one point, I did not choose, in my reply, to offset my individual opinion against his, or to bring the two into comparison. As the question at issue could only be determined by authority, I said:

"Of course I express no opinion of my own, since I make it a rule to acquiesce in the decisions of the courts upon all legal questions."

And again, in concluding what I had to say on the legal points at issue, I added:

"In all that I have said I have been content to assume the law to be as decided by the Supreme Court of the United States, without presuming that my individual opinion would either strengthen or invalidate their decisions."

If Judge Black could reconcile it with his dignity and sense of duty to act on the same assumption, there could be no controversy between him and me in regard to the law of the case. According to the doctrine of the court, a white man, with a negro wife and mulatto children, under a marriage lawful in Massachusetts, on removal into a Territory, could not maintain that interesting "private relation," under the laws of Massachusetts, without the consent or tacit adoption of the Massachusetts law by the territorial government. On the contrary, if Judge Black's view of the axiomatic principle of public law be correct, this disgusting and demoralizing system of amalgamation may be introduced and maintained in the Territories under the law of Massachusetts, in defiance of the wishes of the people and in contempt of all territorial authority, until "they get a constitutional convention or the machinery of a State government in their hands." It is true that Judge Black limits this right to those places where there is no law "in direct conflict with it;" but he also says in the same pamphlet that the Territories "have no attribute or sovereignty about them," and, therefore, are incapable of making any law in conflict with this "private relation" which is lawful in Massachusetts.

According to the doctrine of the court, a Turk, with thirteen wives, under a marriage lawful in his own country, could not move into the Territories of the United States with his family and maintain his marital rights under the laws of Turkey without the consent or tacit adoption of the Turkish law by the territorial government.

In accordance with the Black doctrine, (I use the term for convenience and with entire respect,) polygamy may be introduced into all the Territories, maintained under the laws of Turkey, "until the people of the Territory get a constitutional convention or the machinery of a State government into their hands," with competent authority to make laws in conflict with this "private relation."

According to the doctrine of the court, the peddler with his clocks, the liquor dealer with his whiskies, the merchant with his goods, and the master with his slaves, on removal to a Territory, cannot hold, protect, or sell their property under the laws of the States whence they came, respectively, without the consent or tacit adoption of those laws by the territorial government.

According to the Black doctrine, however, any one person, black or white, from any State of the Union, and from any country upon the globe, may remove into the Territories of the United States and carry with him the law of the State or country whence he came for the protection of any "right of property, private relation, condition or status, lawfully existing in such State or country," without the consent and in defiance of the authority of the territorial government, and maintain the same "until they get a constitutional convention or the machinery of a State government into their hands."

This is the distinct issue between Judge Black and the Supreme Court of the United States. It is not an issue between the Attorney General and myself, for in the beginning of the controversy I announced my purpose "to assume the law to be as decided by the court, without presuming that my individual opinion would either strengthen or invalidate their decisions."

This brings me to consider the third proposition established by the court in the cases which I quoted in my reply.

Under the application of this rule to the Territories, it necessarily follows that "a right of property, a private relation, condition, or *status*, lawfully existing in one State or country, is not changed by the mere removal of the parties to a [Territory,] unless the law of that [Territory] be in direct conflict with it." If, then, it be true, as asserted by Judge Black, that "IT IS PRECISELY SO *with the status of a negro carried from one part of the United States to another*"—that the master's right to his slaves, under the State whence he came, is governed by the same rule as the right of the Turk to his wives under the law of his country, and the right of a white man to his negro wife under the law of Massachusetts; and, as every other "right of property" and "private relation," it follows of necessity that, in the absence of any positive rule upon the subject in the Territory, affirming or denying or restraining the operation of these several laws which the immigrants have brought into the Territory with them, the judicial tribunals will *presume the tacit adoption of them by the territorial government*, unless they are repugnant to its policy or prejudicial to its interests. But still it must be remembered that, when thus "adopted by the territorial government," according to the presumption of the court, *their validity in that Territory depends upon such adoption*, and upon that alone, and *not* upon the authority or sovereignty of the State or country where they originated. Herein consists the palpable, fundamental error of Judge Black, which I pointed out to him in my reply, and established it beyond incredulity or cavil by the decision of the Supreme Court. Is it possible that he could not see the error when pointed out to him? Or does he not consider the Supreme Court of the United States competent authority to determine the rule of law upon the subject?

If his doctrine be sound, he cannot escape the conclusion that polygamy, and the amalgamation of the black and white races by marriage, and every other "private relation lawfully existing in any State or country," in or out of Christendom, no matter how revolting or debasing, may be introduced into the Territories in defiance of all territorial authority, and maintained there under the laws of the State or country whence the parties came, until the people of the Territory "get a constitutional convention or the machinery of a State government into their hands." The limitation, and the only one which he admits on this right, to wit: that it exists in every country and place on earth, "*unless the law of that country be in direct conflict with it*," is annulled and swept away in the Territories by his other position, that "they have no attribute of sovereignty about them," and are incapable of enacting any law "in direct conflict with" "a right of property, a private relation, condition, or *status*, lawfully existing in another State or country." To show that there is no possibility of my misunderstanding him or misrepresenting him in this respect, it is only necessary to remind the reader that Judge Black illustrates his proposition by refering to the fact that marriages lawful in the country where they occurred are deemed lawful in all others; and that children who were legitimate where born are deemed legitimate wherever they go; and then adds, that "it is precisely so with the *status* of a negro carried from one part of the United States to another." He places the question of slavery in the same category with marriage and every other "private relation," and insists that they all depend upon the same rule: that whatever may be the rights of the one in the Territories, "it is precisely so" in respect to the others, and that all of them are alike beyond the reach and control of the territorial government, and must remain unchanged under the laws of the State or country whence the parties came until the people of the Territories are permitted by Congress to assume the functions of sovereign States. Therefore his denial of the right of a territorial legislature to enact a law in direct conflict with the law of slavery in the State whence the

master came with his slave involves a like denial of the right of the territorial legislature to pass a law in conflict with the law of marriage in Massachusetts or in Turkey, whence the white man emigrated with his black wife and mulatto children, or the Turk with his dozen wives and as many children by each. The ground upon which he places his denial of the right of a territorial legislature to make laws upon the subject of slavery, marriage, and every "right of property, private relation, condition, or *status*, lawfully existing in another State or country," if tenable, precludes the possibility of making laws upon any rightful subject of legislation whatsoever. He places it upon the ground that to legislate upon these subjects involves the exercise of sovereign power, and asserts that the Territories "have no attributes of sovereignty about them." I have never doubted that it did require the exercise of sovereign power to legislate upon the subjects referred to, or upon any other subject. I went so far in my "reply" as to quote from the opinion of the Supreme Court by Chief Justice Marshall, that "all legislative powers appertain to sovereignty." Since Judge Black insists that the Territories "have no attribute of sovereignty," and, consequently, no legislative powers, no man who endorses his position can for an instant contend that the territorial legislature can make any law in conflict with polygamy, or the amalgamation of the black and white races by marriage, or any other "private relation lawfully existing in another State or country" whence the parties came to the Territory. The conclusion, therefore, is inevitable that, according to the doctrine of Judge Black, and all who agree with him, slavery, polygamy, amalgamation of the black and white races by marriage, every "right of property, private relation, condition, or *status*, lawfully existing in another State or country," all stand on the same footing, and are governed by the same rules, and may be introduced into the Territories of the United States in defiance of all territorial authority, and maintained there under the laws of the State or country whence the parties came, respectively, "until the people of the Territories shall get a constitutional convention or the machinery of a State government into their hands."

Having ascertained how he establishes all of these institutions, rights, and private relations in the Territories, in opposition to the wishes of the people, and beyond the power of the territorial government to restrain, regulate, or control the same, let us next inquire how and by what means he proposes to *protect the rights* which he asserts to exist? It is worse than mockery to congratulate a man upon the possession of a right while you deny him all the remedies which are essential to its enjoyment. A right without a remedy is a burden—a useless, worthless thing. Judge Black denies, in his rejoinder, that he ever *said* that the people of the Territories had a right to their property *without a remedy*. Hear him:

"I never said that an immigrant to a Territory had a right to his property *without a remedy;* but I admit that he must look for his remedy to the law of his new domicil."

A technical denial, with a mental reservation, for the purpose of making the public believe, without exactly saying it, what is not true, is unworthy of the Attorney General of the United States. He probably never did say, in those precise words, "that an immigrant to a Territory had a right to his property without a remedy," but he has promulgated a doctrine, and labored hard to sustain it, which, if true, leads inevitably to that precise result. Is it not so? It will be recollected that in his "Appendix" he indignantly repudiates the "absurd inference," which the public had drawn from his pamphlet, that the courts could or should afford any protection to slave property in the Territories by the application of those judicial remedies which lawfully existed in the States whence the master removed. Repudiating the doctrine that Congress shall or can intervene for the protection

of slaves or any other property in the Territories, denying that the Territories have any power to legislate upon the subject for the reason that "they have no attribute of sovereignty about them," and rejecting the "absurd inference" that any judicial remedies lawfully existing in another State or country can be lawfully or properly employed for the protection of property in the Territories, what possible REMEDY is there, what remedy can there be, for the violation of this right of property? If there be a remedy it is to be presumed that the Attorney General of the United States, as the highest law officer in the government, is able to tell us what it is, where it is to be found, and how it is to be applied. Having employed two months of his valuable time, to the entire exclusion of less important although official duties, in the preparation of three pamphlets for the purpose of establishing this important "right," and having, unluckily, used such arguments and enforced such rules of law in support of the right as preclude the possibility of there being any lawful remedy for the violation of such right, I took the liberty, in my "reply," of calling the attention of the Attorney General to the fact that, if his doctrine was sound, he had established "A RIGHT WITHOUT A REMEDY." In his rejoinder he denies that HE *ever said so!* Is this such an answer as the public have a right to expect from the Attorney General to an objection urged in good faith, and which, if well taken, is fatal to his entire position? Can any doctrine be sound which establishes a legal right, and, at the same time, precludes the possibility of a legal remedy for its violation? He says further:

"If it shall ever come to that, Mr. Douglas may rest assured that a remedy will be found. No government can possibly exist which will allow the right of property to go unprotected; much less can it suffer such a right to be exposed to unfriendly legislation"

I am asked to have faith in the word of the Attorney General "that a remedy will be found!" If he is unable to tell where its remedy is, upon whom shall we rely to find it? If the Attorney General of the United States does not know of any lawful remedy, what authority has he for the assurance that one will be found? If he does know, is he not bound, as a patriotic citizen and a high public functionary, to tell, when he assures us that "no government can possibly exist which will allow the right of property to go unprotected?" So it seems that the very existence of the government depends upon the discovery of a remedy for the protection of property in the territories, which, we are told, Congress cannot furnish, which the territorial legislature cannot enact, which the "axiomatic principle of public law" does not supply, and which the judicial tribunals cannot apply in pursuance of any known law, but which, thanks to the Attorney General for the consoling assurance, will certainly be found! It is fairly possible that the polygamist with his multiplicity of wives, and the amalgamationist with his hybrid family, and all others who hold similar "private relations," would be able to enjoy and maintain their domestic rights in the Territories without any "judicial remedies," inasmuch as their rights are all founded on a *voluntary arrangement*, which was entered into by the free consent of all the parties, and is supposed to be cemented and consecrated by mutual affection. But it is entirely different with the right of a master to his slave, which is founded upon an *involuntary arrangement*, and can only be enforced by municipal law subjecting the will of the slave to the authority of the master, and compelling implicit obedience to his lawful commands. For this reason it has been held by the Supreme Court of the United States that "the state of slavery is a mere municipal regulation, founded upon and limited to the range of territorial laws." How, then, can slave property be protected in the Territories? According to the doctrine of Judge Black it is not possible to furnish it any legal protection, either by the action of Congress, or by territorial legislation, or by the

application of "judicial remedies" from other States, or in any other mode known to any law which the Attorney General has yet been able to discover, notwithstanding his assurance that a remedy will be found.

By the doctrine of the Supreme Court, however, as I understand it, the laws of other States and countries may prevail and be enforced in the Territories *by the consent* of the territorial government, express or implied; and the territorial legislature may pass all laws and provide all remedies necessary to the full enjoyment and protection of slave property, and every other "right of property, private relation, condition, or *status*," as thoroughly and completely as any State legislature. In the organic act of each of our Territories, Congress has recognized the right of the legislature to exercise "legislative power" over "all rightful subjects of legislation," as fully and completely as the legislature of any State can exercise the same powers, and subject to no other limitations and restrictions than that imposed on all the States, to wit: that their legislation must be "consistent with the Constitution of the United States."

But if it be true, as contended by Judge Black, that the Territories cannot legislate upon the subject of slavery, or any other right of property, private relation, condition, or *status*, lawfully existing in another State or country, it necessarily results that the territorial legislature cannot adopt the laws of other States or countries for the protection of such rights and institutions, and consequently that the courts cannot *presume* the tacit adoption of such laws by the territorial government in the absence of any power to adopt them. Here, again, we see that the doctrine of Judge Black, if it does not conclusively establish a right without the possibility of a remedy, is certainly equivalent to the Wilmot Proviso in its practical results, so far as the institution of slavery is concerned. I demonstrated this proposition to him in my "reply" so conclusively that he did not venture to deny it, much less attempt to answer the argument in his "rejoinder."

I do not deem it necessary to notice in detail the many strange and unaccountable misrepresentations in his "rejoinder" of the matters of fact and law set forth in my "reply," to which he was professing to respond. One or two instances will suffice as specimens of the manner in which the Attorney General is in the habit of disposing of authorities which stand as insuperable obstacles in the path of his argument. In my "reply" I quoted the following paragraph from Judge Story's Conflict of Laws to show that he, at least, thought the law was precisely the reverse of what Judge Black supposed it to be:

> "There is a uniformity of opinion among foreign jurists and foreign tribunals in giving no effect to the state of slavery of a party, whatever it may have been in the country of his birth, or that in which he had been previously domiciled, *unless it is also recognized by the laws of the country of his actual domicil*, and where he is found, and it is sought to be enforced. [After citing various authorities, Judge Story proceeds:] In Scotland the like doctrine has been solemnly adjudged. The tribunals of France have adopted the same rule, even in relation to slaves coming from and belonging to their own colonies. This is also the undisputed law of England."

Now for Judge Black's reply to these passages from Judge Story:

"These passages (will the reader believe it?) merely show that a slave becomes free when taken to a country *where slavery is* NOT TOLERATED *by law*." Substituting the words "not *tolerated* by law" for the words "unless it is also *recognized* by law." Judge Black reverses Judge Story's meaning, and makes that learned jurist declare the law to be *precisely the reverse* of what Judge Story stated it to be! "*Will the reader believe it?*" Not content with changing the language and reversing the meaning, and citing it, in its altered form, as evidence that I had misapplied the quotation, the Attorney General has the audacity to exclaim in parenthesis, for the purpose of giving

greater emphasis to his allegation, "will the reader believe it?" Judge Black cannot avoid the responsibility which justly attaches to such conduct by the pretence that slavery was prohibited by law in Scotland, England, and France, for the reason that the reports of the cases show that the laws of those countries were *silent* upon the subject, and that the decisions were made upon the distinct ground that there was no law *recognizing* slavery, and *not* upon the ground that it was prohibited by law. Nor can Judge Black's mode of treating the quotation which I made from the opinion of the Supreme Court of the United States in the case of Prigg *vs.* the Commonwealth of Pennsylvania, upon the direct and precise point in issue, be considered scarcely less reprehensible in the eyes of all honorable men. What he says, and all he says, in regard to that decision is as follows:

"The quotation from the opinion of the Supreme Court, in Prigg *vs.* Pennsylvania, is made with the same rashness and with no nearer approach to the point. The public will doubtless be somewhat surprised by Judge Douglas' unique mode of dealing with books. For myself I am inexpressibly amazed at it. I have no right to suppose that he intended to insult the intelligence of his readers, or to impose upon their ignorance, by making a parade of learning and research, which he did not possess. But how shall we account for quotations like those? I am obliged to leave the riddle unread."

My "mode of dealing with books," *by quoting them truthfully, without changing the language or perverting the meaning,* is "unique" in the estimation of Judge Black. He thinks "the public will doubtless be somewhat surprised," and for himself says "I am inexpressibly amazed at it!"

This confession will doubtless explain the reasons of his mode of dealing with books and quotations. I sincerely wish that I could conscientiously say of him what he has said of me in the following sentence:

"I have no right to suppose that he intended to insult the intelligence of his readers, or to impose upon their ignorance, by making a parade of learning and research, which he did not possess." Unluckily for himself, he has not left "the riddle unread."

I will now devote a few words to a more pleasing and agreeable duty, by presenting to the public some of the beneficial results of this discussion. The Attorney General has been forced, by the exigencies of the controversy, step by step and with extreme reluctance, to make several important confessions, which necessarily involve an abandonment, on the part of his clients, of various pernicious heresies with which the country has been threatened for the last two years.

FIRST. THAT SLAVERY EXISTS IN THE TERRITORIES BY VIRTUE OF THE CONSTITUTION OF THE UNITED STATES.

From the day that Mr. Buchanan sent to Congress his Lecompton message until the day when my article was published in Harpers' Magazine for September last, every Democrat has been branded as a political heretic, proscribed, excommunicated, and outlawed, who would not acknowledge that slavery exists in the Territories *by virtue of the Constitution of the United States.* In that article, without assailing any one or impugning any man's motives, I demonstrated beyond the possibility of cavil or dispute by any fair-minded man, that if the proposition were true, as contended by Mr. Buchanan, that slavery exists in the Territories by virtue of the Constitution, the conclusion is inevitable and irresistible, that it is the imperative duty of Congress to pass all laws necessary for its protection; that there is and can be no exception to the rule that a right guaranteed by the Constitution must be protected by law in all cases where legislation is essential to its enjoyment; that all who conscientiously believe that slavery exists in the Territories by virtue of the Constitution, are bound by their consciences and their oaths of fidelity to the Constitution to support a congressional slave code for the Territories; and that no considerations of political expediency can relieve an

honest man, who so believes, from the faithful and prompt performance of this imperative duty.

I also demonstrated, in the same paper, that the Constitution, being uniform throughout the United States, is the same in the States as in the Territories, is the same in Pennsylvania as in Kansas; and, consequently, if slavery exists in Kansas by virtue of the Constitution of the United States, it must of necessity exist in Pennsylvania by virtue of the same instrument; and if it be the duty of the federal government to force the people of the Territories to sustain the institution of slavery whether they want it or not, merely because it exists there by virtue of the Constitution, it becomes the duty of the federal government to do the same thing in all the States for the same reason.

This exposition of the question produced consternation and dismay in the camp of my assailants. Their hope was to secure the confidence and favor of the South by conceding their right to plant slavery in the Territories in opposition to the wishes of the people and in defiance of the territorial authorities; and, at the same time, satisfy the North by withholding all legislative protection and judicial remedies, without which the right becomes a naked, useless, worthless thing. My exposure opened their eyes to the dangers of their perilous position, and made it obvious, even to their comprehension, that they could no longer successfully maintain the ground they then occupied. Afraid to advance and pursue their doctrines to their logical consequences; and ashamed to retreat and return to the impregnable position of popular sovereignty, which they had so recently abandoned, they began to look about for some new expedient to relieve themselves from the awkward dilemma into which they had been driven by one short article in Harpers' Magazine. Just at this critical moment, however, a suggestion was made which it was supposed would relieve them from the necessity of adopting either alternative, and, at the same time, produce the same results which they had vainly anticipated from their former plan. It was suggested that a very promising young lawyer in Georgia, a younger brother of the Secretary of the Treasury, had employed his leisure time, during the intervals between his cases in court, in writing a book on slavery, in which he had exploded the doctrine that "the state of slavery was a mere municipal regulation, founded upon and limited to the range of territorial laws," as erroneously decided by the Supreme Court of the United States, and by the highest judicial tribunals in most of the States of the Union, and in Great Britain and upon the continent; and in lieu of this old-fashioned doctrine, had demonstrated that the axiomatic principles of public law would enable the owner of a slave to remove from one country to another and carry with him the law of his former domicil and, under its sanction, hold his slaves in his new domicil without the consent and in defiance of the authority of the country to which he had removed with his slave. "What a happy conception," as a substitute for the dreaded doctrine of a congressional slave code on the one hand, and on the other the deserted doctrine that "the people of a Territory, like those of a State, shall decide for themselves whether slavery shall or shall not exist within their limits."

Of course, the new theory was instantly adopted and a copy of "Cobb on Slavery" immediately procured, and the duty assigned to Judge Black, as the highest law officer of the government, to prepare an essay illustrative of the beauties of the new system, with authority to deny in the boldest terms that anybody "on this side of China" ever thought or said that the Constitution of the United States establishes slavery in the Territories or anywhere else.

Hence we find on the second page of Judge Black's pamphlet these emphatic words:

"THE CONSTITUTION CERTAINLY DOES NOT ESTABLISH SLAVERY IN THE TERRITORIES OR ANYWHERE ELSE. NOBODY IN THIS COUNTRY EVER THOUGHT OR SAID SO."

This confession is ample reward for all the labor that the article in Harper's Magazine cost me, protesting, however, that I am acquainted with no rule of Christian morality which justifies gentlemen in saying that "nobody in this country ever thought or said so," in the face of Mr. Buchanan's Silliman letter and Lecompton message. This confession is presumed to have the sanction of the President and his cabinet, and therefore may be justly regarded as an official and authoritative abandonment of the pernicious heresy with which the country has been irritated for the last two years, THAT SLAVERY EXISTS IN THE TERRITORIES BY VIRTUE OF THE CONSTITUTION OF THE UNITED STATES. It is true that, for the purpose of covering their retreat and concealing their discrepancies, they have resorted to an expedient no less absurd, but entirely harmless, because in direct conflict with the well established principles of public law, as expounded by all the judicial tribunals in christendom. It is, however, but an act of simple justice to Mr. Thomas R. R. Cobb, whose book bears marks of great ability and research, (although in direct conflict, on some points, with the most eminent jurists and tribunals in this country and Europe,) to say that his book does not justify the "absurd inferences" drawn from it by Judge Black.

Another political heresy, which is in substance, although not in terms, abandoned in Judge Black's rejoinder, is—

"THAT THE TERRITORIES HAVE NO ATTRIBUTE OF SOVEREIGNTY ABOUT THEM."

It will be recollected that in my Harper article I drew the parallel between our Territories and the American colonies, and showed that each possessed the exclusive power of legislation in respect to their internal polity; that, according to our American theory, in contradistinction to the European theory, this right of self-government was not derived from the monarch or government, but was inherent in the people; and that under our American system "every distinct political community loyal to the Constitution and the Union is entitled to all the rights, privileges, and immunities of self-government in respect to their internal polity, subject only to the Constitution of the United States."

In reply, Judge Black argued that this claim involved the possession of sovereignty by the people of the Territories; that "they have no attribute of sovereignty about them;" that "they are public corporations established by Congress to manage the local affairs of the inhabitants, like the government of a city established by a State Legislature;" that "there is probably no city in the United States whose powers are not larger than those of a Federal Territory;" and, in fact, adopting the Tory doctrine of the revolution, that all political power is derived from the crown or government, and not inherent in the people.

In my reply I showed that the people of the Territories do pass laws for the protection of life, liberty, and property, and, in pursuance of those laws, do deprive the citizen of life, liberty, and property whenever the same become forfeited by crime; that they exercise the sovereign power of taxation over all private property within their limits, and divest the title for non-payment of taxes; that they exercise the sovereign power of creating corporations, municipal, public, and private; that they possess "*legislative power*" over "all rightful subjects of legislation consistent with the Constitution and the organic act;" and I quoted the language of Chief Justice Marshall, in delivering the unanimous opinion of the Supreme Court, that "*all legislative powers appertain to sovereignty.*"

Now let us see with what bad grace and worse manner, and yet how

completely the Attorney General backs down from his main position, that the Territories "have no attribute of sovereignty about them:"

"Every half-grown boy in the country who has given the usual amount of study to the English tongue, or who has occasionally looked into a dictionary, knows that the sovereignty of a government consists in its uncontrollable right to exercise the highest power. But Mr. Douglas tries to clothe the Territories with the 'attributes of sovereignty,' not by proving the supremacy of their jurisdiction in any matter or thing whatsoever, but merely by showing that they may be, and some of them have been, authorized to *legislate* within certain limits, to exercise the right of *eminent domain*, to lay and collect *taxes* for territorial purposes, to deprive a citizen of *life, liberty, or property*, as a punishment for crime, and to *create corporations. All this is true enough*, but it does by no means follow that the provisional government of a Territory is, therefore, a sovereign in any sense of the word."

So he surrenders at last. This discussion furnishes a signal example of what perseverance can accomplish. It has taken a long time to drive the Attorney General into the admission that the people of a Territory are clothed with the LAW-MAKING POWER; with the right "to *legislate* within certain limits;" (that is to say, upon "all rightful subjects of legislation consistent with the Constitution;") with "the right of eminent domain, to lay and collect taxes for territorial purposes, to deprive a citizen of life, liberty, and property as a punishment for crime, and to create corporations." I am not quite sure that "every half-grown boy in the country who has given the usual amount of study to the English tongue, or has occasionally looked into a dictionary," does know that these powers are all "attributes of sovereignty;" but I am very confident that no respectable court, jurist, or lawyer, "on this side of China," (Judge Black alone excepted,) ever exposed their ignorance by questioning it, much less had the audacity to deny it. Since *the fact is admitted* that the Territories do possess and may rightfully exercise those "legislative powers" which are recognized throughout the civilized world as the very highest attributes of sovereignty—the power over life, liberty, and property—I shall not waste time in disputing with the Attorney General about the *name* by which he chooses to call them. It is sufficient for my purpose that I have at last forced him into the admission that the law-making power over all rightful subjects of legislation appertaining to life, liberty, and property, resides in and may be rightfully exercised by the Territories, subject only to the limitations of the Constitution.

This brings to my notice another important confession in Judge Black's rejoinder, intimately connected with the preceding, which is: THAT IT IS AN INSULT TO THE AMERICAN PEOPLE TO SUPPOSE THAT THE PEOPLE OF ANY ORGANIZED TERRITORY WOULD ABUSE THE RIGHT OF SELF-GOVERNMENT IF IT WERE CONCEDED TO THEM.

This last confession, taken in connexion with the previous admission of the power, removes the last vestige of any substantial objection to the doctrine of popular sovereignty in the Territories. Unable to make any plausible argument against it in theory and upon principle, as explained in Harpers' Magazine, Judge Black expended all the powers and energies of his intellect in his first pamphlet to render the doctrine odious and detestable upon the presumption of its probable practical results. He argued that it might result in "legislative robbery;" that "they may take every kind of property in mere caprice, or for any purpose of lucre or malice, without process of law, and without providing for compensation;" that they "may order the miners to give up every ounce of gold that has been dug at Pike's Peak;" that they may "license a band of marauders to despoil the emigrants crossing the Territory."

These were the arguments employed by the Attorney General, in the beginning of this controversy, to render the doctrine of popular sovereignty odious and detestable in the eyes of all honest men, and to prepare the minds of the people for the favorable reception of his new doctrine, that property in the

Territories must be protected under the laws of the State whence the owner removed. Very soon, however, the lawyers began to amuse themselves and the public by exposing the folly and absurdity of the pretence that the territorial courts could apply the judicial remedies prescribed by the legislature of Kentucky or of any other State. Becoming ashamed of his position, Judge Black wrote an appendix to his pamphlet, in which he declared that while the "title which the owner acquired in the State" from whence he removed must be restricted in the Territory, "THE ABSURD INFERENCE which some persons have drawn from it is *not true*, that the master also takes with him the JUDICIAL REMEDIES which were furnished him at the place where his title was acquired," and that "the respective rights and obligations of the parties must be protected and enforced *by the law prevailing at the place where they are supposed to be violated*."

By this time it was my turn to reply, when I showed that his doctrine, if true, established a RIGHT WITHOUT A REMEDY, and if the people of the Territories could not be trusted in the management of their own affairs and in the protection of life, liberty, and property, *they could not be relied upon to provide the remedies!* This reply was made in good faith, and believed to be pertinent to the issue and fatal to his position. Instead of receiving it in good temper, and obviating the force of it by fair argument, if it were possible for him to do so, he flies into a rage and denies that he "said that an immigrant to a Territory had a right to his property *without a remedy*," and that "*it is an insult to the American people to suppose that any community can be organized within the limits of our Union who will tolerate such a state of things!*" Listen to his patriotic indignation at the bare suggestion that the people of the Territories cannot be trusted to guard and protect the rights of property and provide the remedies:

"I never said, that an immigrant to a Territory had a right to his property *without a remedy;* but I admit that he must look for his remedy to the law of his new domicil. It is true that he takes his life, his limbs, his reputation, and his property, and with them he takes nothing but his naked right to keep them and enjoy them. He leaves the judicial remedies of his previous domicil behind him. It is also true, that in a Territory just beginning to be settled, he may need remedies for the vindication of his rights above all things else. In his new home there may be bands of base marauders, without conscience or the fear of God before their eyes, who are ready to rob and murder, and spare nothing that man or woman holds dear. In such a time it is quite possible to imagine an abolition legislature whose members owe their seats to Sharp's rifles and the money of the Emigration Aid Society Very possibly a legislature so chosen might employ itself in passing laws *unfriendly* to the rights of honest men and *friendly* to the business of the robber and the murderer. I concede this, and Mr. Douglas is entitled to all the comfort it affords him. But it is an insult to the American people to suppose, that any community can be organized within the limits of our Union, who will tolerate such a state of things."

Why did Judge Black insult the American people by supposing and assuming that they would do these things if left free to regulate their own internal polity and domestic affairs in their own way? It was deemed a necessary expedient in order to render popular sovereignty and its advocates odious and detestable. Why then did he in the course of the same discussion turn round and say that it was an insult to the American people to suppose that the people of the Territories would do those things when allowed to regulate their own affairs in their own way? This too was in turn deemed a necessary expedient in order to avoid the horn of the dilemma into which he had been fairly driven, and escape the odium of an attempt to deceive the southern people, of which he had been fairly convicted of advocating a "*right without a remedy*."

To what desperate shifts will men resort or be driven when they deliberately abandon *principle* FOR *expediency?* No more striking or humiliating illustration of this truth was ever given than this controversy presents.

Each change of ground, every shifting of position has been done as an expedient to avoid what at the time was deemed a worse alternative. The ground on which Mr. Buchanan was elected, that "the people of a Territory, like those of a State, shall decide for themselves whether slavery shall or shall not exist within their limits," was changed, and in lieu of it the position assumed that "slavery exists in the Territories by virtue of the Constitution," as an expedient to obtain the support of certain southern ultras and fire-eaters who had always opposed popular sovereignty, on the supposition that without such support Mr. Buchanan's administration would be in a minority in the two houses of Congress. The confession that "the Constitution certainly does not establish slavery in the Territories, nor anywhere else," was made, and the position that slavery may be protected in the Territories under the laws of other States assumed, as an expedient to avoid the necessity of supporting a congressional slave code. The confession that the people of the Territories may exercise legislative powers over all rightful subjects of legislation pertaining to life, liberty, and property, was made as an expedient to avoid the odium of advocating a right without a remedy, by showing that the territorial legislatures might lawfully and rightfully pass all laws and prescribe all judicial remedies necessary for the protection of property of every description, slavery included. The declaration that it is an insult to the American people to suppose that the people of the Territories, when left free to manage their own affairs in their own way, would be guilty of "legislative robbery," would confiscate private property, seize it in mere spite, &c., was deemed a necessary expedient for the purpose of proving that the people might safely be trusted to furnish the protection and provide the remedies without which slaves could not be held and slave property protected in the Territories under the laws of other States.

I shall not reopen the discussion of the Dred Scott decision, but rest that part of the case upon a few extracts from a pamphlet recently published by the Hon. Reverdy Johnson. It will be remembered that Mr. Johnson was the leading counsel in the argument (on what is sometimes called the southern side) of the Dred Scott case, and that his argument became the basis upon which the opinion of the court rests. It may be presumed, therefore, that he has some knowledge of the points argued and decided in that case. Although Mr. Johnson's pamphlet was published, circulated, and for sale in this city some days before the publication of Judge Black's rejoinder, he has not ventured to take any other notice of it than a scurrilous attack in his organ, where he is known to be in the habit of praising himself and his own productions, and assailing and belittling his adversaries.

With these extracts from Mr. Johnson's unanswerable argument I shall close all I have to say for the present in relation to Judge Black:

"It has, however, been thought, and this too by gentlemen of unquestionable ability, that the Supreme Court, in the case so often referred to, (the Dred Scott case,) has decided that such power does not reside in a territorial government. This, it is submitted, is a mis-conception of the decision. The single question before the court in this connexion was, whether Congress possesses the power to prohibit the introduction of slave property into a Territory? In ruling it adversely the court does not say or intimate that such property in a Territory has other safeguards, or that the owner is entitled to any further protection in its enjoyment, than exists in regard to other kinds of property. A sentence or two from the opinion of the Chief Justice will, it is believed, make this plain." * * * * *

"This being obviously the doctrine of the court, it necessarily follows that whatever a constitutional government can do in regard to any other kind of property, it can do in regard to this. If any other kind may be excluded, this may be excluded; if any other kind may be more or less or not at all protected by legislation, the same is true as to this. If any other, after its legal introduction, can be, upon public grounds, excluded or abolished, it is also the case as to this. It is but sameness, indentity of title, and protection, which the court maintains, not inferior or paramount—that all stand on the same footing, liable alike to the same restrictions and limitations, and entitled to the same guarantees.

What is there in this species of property to exempt it from territorial legislative power? What is there to make it the peculiar and single duty of such a power to legislate for its admission or protection? If it be but property, and, as such, only embraced by constitutional guarantees, it must share the condition of all other property, and, therefore, be subject to the legislative power. If this is not true, the territorial State would be almost without laws—be one of nature. The peace and prosperity of the people depend upon laws defining and regulating property. Without such a power property itself would be in a great degree out of the pale of protection. But if the power exists, it must depend upon those who possess it; how they will, in any particular case, exert it, or whether they will exert it at all. These must rest with their intelligence and sense of duty; Congress has no power but to recognize the territorial government, a power which is theirs for the same reason that proves the power in the first instance to create it. Nor can it be properly said that the authority thus contended for exists upon the assumption that sovereignty 'resides with such a people.' If by sovereignty is here meant an absolute and paramount power over all other power, it certainly is not possessed. But if it is used in a restricted sense, as involving only the power to do the things supposed, when legislative power is granted to them in relation to their own internal concerns, subject to the prohibition to be found in the Constitution, and which, in the language of the court in another passage of the opinion, in some instances 'it would be more advisable to commit' to them, as being the most 'competent to determine what was best for their own interests,' then certainly such sovereignty is theirs. And this, and this only, is the sovereignty contended for by Judge Douglas in his article in Harper." * * * * * * * * * * *

"As has been seen, this doctrine is not only not inconsistent with the opinion of the Supreme Court, *but maintained by its principles.*"

Turning from Judge Black to Dr. Gwin, it is but respectful to say a few words upon his letter, which illuminated the columns of the central organ of my assailants the day previous to Judge Black's rejoinder. The identity of language, thought, and style, which pervades the two productions, while rejecting the idea that they could have been written with the same pen, furnishes conclusive evidence that great men will think alike when in the same pen. For example—

Dr. Gwin says:

"*The difference* BETWEEN MR. DOUGLAS AND THE DEMOCRATIC PARTY, sustained by this decision of the Supreme Court of the United States, *is this*," &c., &c.

Judge Black says:

"*The whole dispute* (as far as it is a doctrinal dispute) BETWEEN MR. DOUGLAS AND THE DEMOCRATIC PARTY *'ies substantially in these two propositions,*" &c., &c.

This coincidence, without wearying the reader with other examples, will suffice to show the unity of purpose and harmony of design with which my assailants pursue me. To separate "Mr. Douglas" from the "Democratic party" seems to be the patriotic end to which they all aim. They may as well make up their minds to believe, if they have not already been convinced of the fact by the bitter experience of the last two years, that *the thing cannot be done.* I gave them notice, at the initial point of this crusade, that no man or set of men on earth, save one, could separate me from the Democratic party; and as I was that one, and the only one who had the power, I did not intend to do it myself nor permit it to be done by others!

NOTE BY JUDGE DOUGLAS.

WASHINGTON, *November* 16, 1859.

On Monday, November 7, I devoted the greater portion of my time, as I had done for the two or three preceding days, to preparing a rejoinder to that of Judge Black, then just published. During that time I had been suffering intensely with inflammatory rheumatism, which had confined me to my couch and rendered me incapable of moving. Suddenly, however, my disease changed into a regular attack of bilious fever, from which moment I have not been able to write a line or to read or revise a word I had previously written. Being now satisfied, after the lapse of ten days, that I will not be able within a reasonable period to complete my rejoinder, I have determined to authorize my friend, Mr. Sheridan, to publish the foregoing unfinished pages, without revision, alteration, or the omission of a word.

I had particularly desired to refer to the record in the case of Chase's amendment for the purpose of showing conclusively that, if Dr. Gwin had published the entire record, instead of omitting half of it, he would have conveyed to the public an impression directly the reverse of that he attempted to produce by publishing one-half and suppressing the other. In regard to the amendment of Mr. Trumbull, cited also by Dr. Gwin, the same proposition is true, and would have been proven by the record. I am too feeble, however, to add more. Here let the controversy close for the present, and perhaps forever.